

REMARKS

Claims 1-30 and 32-36 are now pending in the application. Claims 33-36 are added by this amendment. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

The applicants representative thanks the Examiner for the interview given on 1/28/2005. During the interview claims 1 and 26 were discussed in light of the cited art. No agreement was reached regarding allowability of the claims as presently pending.

NEW CLAIMS

New claims 33-40 have been added. Independent claim 33 recites, "a substantially single piece elongated cylindrical member having a first end and a second end interconnected by a middle portion" with a thread on the first end and a barb on the second end. At least these portions of Independent claim 33 are not taught or fairly suggested by the cited art. In particular no reference includes a first end with a thread and a second end with a barb. Bramlet teaches a threads at both ends of a device because the pieces are separate and implanted separately. Evans et al. teaches only fins because the device is pushed into place. Thus, there is no teaching to combine Beramlet with the single piece and fixed device of Evans et al. since Evans et al. can not have threads at both ends like the device of Bramlet. Thus, there is actually a teaching away of combining Bramlet with Evans et al. in the art because the single piece device of Evans would be inoperative if it had the threads at both ends as taught by Bramlet. Therefore, the cited art does not teach or fairly suggest Independent Claim 33, or any of the claims that depend

directly or indirectly therefrom.

New claim 37 recites, "forming a bore in the first phalange; forming a bore in the second phalange; providing a thread on a first end of the device; providing a barb on the second end of the device; determining an appropriate angle between the first end to be positioned relative to the bore of the first phalange and the second end to be positioned relative to the bore of the second phalange during an operative procedure; forming the determined angle in the device". None of the cited art, either alone or in combination, teaches or suggests such a method. None of the references teach that an angle can be determined and then formed during an operative procedure. Also, none of the cited art, alone or in combination, teaches or suggests that a first end of the device is threaded into a first phalange and a second end of the device is threaded into the second phalange. Therefore, the method of claim 37 is in condition for allowance, as are each of the claims that depend directly or indirectly therefrom.

REJECTION UNDER 35 U.S.C. § 101

Claims 1-14 stand rejected under 35 U.S.C. § 101, because they are drawn to non-statutory subject matter. This rejection is respectfully traversed.

Although the Applicant asserts that Independent claim 1 never positively recited any non- statutory subject matter, Independent Claim 1 has been non-narrowingly amended and this rejection is now rendered moot.

REJECTION UNDER 35 U.S.C. § 103

Claims 1, 12, 14, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans et al. (4,516,569) in view of Berman (6,017,366). Claims 2-11, 13, 15-28, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans et al. (4,516,569) in view of Berman (6,017,366) in view of Bramlet (5,954,970). Claims 15 and 30 are rejected as being obvious to one having ordinary skill in the art at the time of the invention. Claims 26-28, 31, 32 are rejected as having been obviously carried out in the operation of the device, as set forth in the Office Action. These rejections are respectfully traversed.

Claims 15-25 and 30 have been cancelled and the rejections thereto have been rendered moot.

Evans et al. teaches that a device may be formed of ultra high molecular weight polyethylene and polypropylene. Even though an angled device is disclosed, the materials and teachings of Evans et al. teaches that an angle is fixed and is not selectable. Only a single angle is formed in a device that is never selectable to a fixed angle. Further, Evans et al. teaches that fins are provided and that the device is only pushed into bone fragments. Berman only teaches that a carpal implant can be formed to include a resorbable material. Berman does not teach that ends of a device can be formed or that they would be positioned in a bone. Finally, Bramlet discloses a device that is to provide a joint replacement and includes a flexible joint. The device of Bramlet includes a plurality of pieces that are all implanted separately.

Independent Claims 1 recites, "a monolithic substantially elongated member comprised of a resorbable material . . . wherein the middle portion has a first fixed angle

adjustable to a second fixed angle such that a fixed angle is formed between the first end portion and the second end portion." which is not taught or suggested by any of the references. The apparatus includes a particular structure which allows the user deformation while Evans et al. does not include any such structure. In fact Evans et al. teaches that a device is formed at a set angle with machining or molding. Bramlet teaches that the device must not include a fixed angle as it is articulating. Berman is silent as to any angles or user deformable portions. Therefore, Independent Claim 1, is in condition for allowance, as are each of the claims that depend directly or indirectly therefrom.

Independent claim 26 recites, "wherein the middle portion has a bend formed during the operative procedure by a user such that the first end portion and the second end portion have a fixed angle towards one another". Independent Claim 29 recites, " wherein the middle portion has a fixed curvature such that a fixed angle may be formed during the operative procedure between the first end portion and the second end portion." Also Independent claim 30 recites, " wherein the middle portion is operable to have a user formed fixed curvature such that a fixed angle is formed between the first end portion and the second end portion". As discussed in relation to Independent claim 1, the art does not teach an apparatus having a user formable angle or a method for an operative procedure to produce such an angle. If the Examiner does not believe that the claims are in condition for allowance the Applicant respectfully requests that the Examiner specifically identify those portions of the art that teach or suggest each of the elements of the presently pending claims.

Further Independent Claim 15, recites " wherein the middle portion has an angle such that a fixed angle of about 172 degrees is formed between the first end portion and

the second end portion". Even if Evans et al. teaches a bent device it, nor any of the other cited art, teaches or fairly suggests a particular angle. Therefore, Independent claim 15 is also in condition for allowance, as are each of the claims depending directly or indirectly therefrom.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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